

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DENNIS MCCABE,

Plaintiff,

v.

JIM GIBBONS, *et al.*,

Defendants.

3:09-cv-00244-LRH-WGC

ORDER

Before this Court is the Report and Recommendation of U.S. Magistrate Judge William G. Cobb (#164¹) entered on July 24, 2013, recommending denying Plaintiff's Motion for Summary Judgment (#119) refiled on December 27, 2012, and denying in part and granting in part Defendants' Motion for Summary Judgment (#130) refiled on December 27, 2012. Defendants filed their Objections to Report and Recommendation of U.S. Magistrate Judge (#165) on August 7, 2013. Plaintiff filed his Objections to Report and Recommendation by U.S. Magistrate Judge (#166) on August 12, 2013, and filed his Response to Defendants' Objections to Magistrate Order (#169) on August 26, 2013. Defendants filed their response to Plaintiff's objections (#170) on September 9, 2013. This action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 1B 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

¹Refers to court's docket number.

1 The Court has conducted its *de novo* review in this case, has fully considered the objections of
2 the Plaintiff and Defendants, Plaintiff's and Defendants' responses to the other party's objections, the
3 pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. §
4 636 (b) (1) (B) and Local Rule IB 3-2. The Court determines that the Magistrate Judge's Report and
5 Recommendation (#164) entered on July 24, 2013, should be adopted and accepted.

6 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation
7 (#164) entered on July 24, 2013, is **adopted and accepted**, and Plaintiff's Motion for Summary
8 Judgment (#119) is **DENIED**.

9 IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (#130) is
10 **GRANTED in part and DENIED in part** as follows:

- 11 1. The Motion for Summary Judgment as to Defendants Brackbill, Gibbons, Miller, Cortez
12 Masto and Skolnik is GRANTED as to Plaintiff's Eighth Amendment claim against them,
13 asserted in Count I;
- 14 2. The Motion for Summary Judgment of Defendants Banister, McDaniel and Martin as to
15 Plaintiff's Eighth Amendment claim related to treatment and care for his spinal stenosis in
16 Court I is DENIED given the existence of genuine issue of material fact;
- 17 3. The Motion for Summary Judgment of Defendant Martin as to Plaintiff's Eighth
18 Amendment claim related to treatment and care for his umbilical hernia in Count II is
19 DENIED given the existence of genuine issues of material fact;
- 20 4. The Motion for Summary Judgment of Defendant Martin as to Plaintiff's Eighth
21 Amendment claim related to treatment and care for his ganglion cyst in Count II is
22 GRANTED; and
- 23 5. The Motion for Summary Judgment of Defendants Lyons and Saunders is GRANTED as
24 regards Plaintiff's retaliation claim in Count III.

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1 IT IS FURTHER ORDERED that the official capacity damages claims against the remaining
2 Defendants are DISMISSED.

3 IT IS FURTHER ORDERED that Defendants' request for qualified immunity is DENIED.

4 IT IS FURTHER ORDERED that this case shall proceed as to Plaintiff's Eighth Amendment
5 claim in Count I related to his spinal stenosis against Defendants Bannister, McDaniel and Martin, and
6 as to Plaintiff's Eighth Amendment claim in Count II related to his umbilical hernia against Defendant
7 Martin.

8 IT IS FURTHER ORDERED that Plaintiff and Defendants Banister, McDaniel and Martin shall
9 file a proposed pre-trial order within forty-five (45) days of the entry of this order.

10
11 IT IS SO ORDERED.

12 DATED this 26th day of September, 2013.



13
14 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE